



Paper 11

NAIPO (NORTH AMERICA INTERNATIONAL PATENT OFFICE)
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SEP 14 2004

OFFICE OF PETITIONS

ON PETITION

In re Application of
Shu-Wen Sung et al.
Application No. 10/063,822
Filed: May 16, 2002
Attorney Docket No. KYCP0005USA

This is a decision on the petition, filed July 20, 2004 under 37 CFR 1.137(b), to revive the above-identified application.

The petition is **DISMISSED**.

Any further petition to revive the above-identified application must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(b) are permitted. The reconsideration request should include a cover letter entitled "Petition under 37 CFR 1.137." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

This application became abandoned for failure to timely reply to the final Office Action mailed May 5, 2003. A response was filed October 8, 2003 with a three month extension of time request. By Advisory Action of January 8, 2004, petitioner was advised that the response did not place the application in condition for allowance. This application became abandoned on August 6, 2003. Accordingly, a Notice of Abandonment was mailed March 18, 2004.

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by:

(1) the required reply (unless previously filed), which may be met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute, but must be the payment of the issue fee or any outstanding balance thereof in an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof;

(2) the petition fee required by 37 CFR 1.17(l);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) a terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) in a design application, a utility application filed before June 8, 1995, or a plant application filed before June 8, 1995.

The petition does not satisfy requirement (1) above.

The application became abandoned for failure to file a response within the meaning of 37 CFR 1.113 to the final rejection of May 5, 2003, within the time period for response. No response has been submitted with the petition to revive.

The only proper reply to a final Office action is an amendment placing the application in *prima facie* condition for allowance, a Notice of Appeal accompanied by the requisite fee, a Request for Continued Examination (RCE) accompanied by a proper submission, or a continuing application.

Petitioner must submit a proper reply to the final Office action mailed on May 5, 2003, with any renewed petition. **Petitioner should note that submission of any renewed petition without the required reply will be construed as intentional delay.**

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petitions
 Commissioner for Patents
 P.O. Box 1450
 Alexandria VA 22313-1450

By FAX: (703)872-9306
 ATTN: Office of Petitions

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (703) 305-4497.¹



Patricia Faison-Ball
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¹Effective September 27, 2004 the telephone number will be (571) 272-3212